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 2 MICHAEL F. MCCABE, Bar No. 111151
 3 MICHELLE R. BARRETT, Bar No. 197280
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9 Attorneys for Defendants
 10 HSBC MORTGAGE CORPORATION (USA)
 AND HSBC BANK USA, N.A.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 Philip Wong, Frederic Chaussy, and Leslie
 15 Marie Shearn, individually, on behalf of all
 others similarly situated, and on behalf of
 16 the general public,

17 Plaintiffs,

18 v.
 19 HSBC Mortgage Corporation (USA);
 HSBC Bank USA, N.A.; and DOES 1
 20 through 50, inclusive,

21 Defendants.

22 Case No. C 07 2446 MMC [ECF]

**23 DECLARATION OF MICHELLE R.
 24 BARRETT IN SUPPORT OF
 25 DEFENDANTS' OPPOSITION TO
 26 PLAINTIFFS' MOTION FOR LEAVE TO
 27 AMEND FIRST AMENDED COMPLAINT**

28 Date: August 22, 2008
 Time: 9:00 a.m.
 Courtroom: 7 (19th Floor)
 Judge: Hon. Maxine M. Chesney

Complaint filed: May 7, 2007
 FAC filed: June 29, 2007
 Trial Date: Not Yet Set

1 I, Michelle R. Barrett, hereby declare and state:

2 1. I am a shareholder with Littler Mendelson, which is counsel of record for
 3 Defendants HSBC Mortgage Corporation (USA) ("HMCU") and HSBC Bank USA, N.A. ("HBUS")
 4 in this action. I have personal knowledge of the facts set forth below. If called as a witness, I could
 5 and would testify to the following.

6 2. Plaintiffs' counsel, through Bryan Schwartz, initially broached the subject of
 7 amending their First Amended Complaint in an e-mail message addressed to me on January 9, 2008.
 8 Attached hereto as Exhibit A is a true and correct copy of this e-mail correspondence.

9 3. The issue of Plaintiffs amending their First Amended Complaint was next
 10 discussed in a February 8, 2008 letter sent by Plaintiffs' counsel Paul Lukas to me. Attached hereto
 11 as Exhibit B is a true and correct copy of a letter I received from Plaintiffs' counsel Paul Lukas on
 12 February 8, 2008.

13 4. In response to this letter, I sent a letter dated February 11, 2008 to Mr. Lukas'
 14 attention. Attached hereto as Exhibit C is a true and correct copy of my February 11, 2008 letter
 15 sent to Mr. Lukas.

16 5. Plaintiffs' desire to amend their First Amended Complaint was not raised
 17 again until March 5, 2008. At that time, Mr. Scwhartz sent me an e-mail message related to
 18 Plaintiffs' proposed amendments. Attached hereto as Exhibit D is a true and correct copy of the
 19 March 5, 2008 e-mail I received from Mr. Schwartz.

20 6. On March 11, 2008, I summarized the parties' discussions regarding
 21 Plaintiffs' request to amend their First Amended Complaint in a letter addressed to Mr. Schwartz and
 22 to Mr. Lukas. In this letter, I stated that Defendants would not agree to any of the amendments
 23 proposed in our earlier discussions. Attached hereto as Exhibit E is a true and correct copy of a
 24 letter I sent to Mr. Schwartz and Mr. Lukas on March 11, 2008.

25 7. During the meet and confer process, Plaintiffs' counsel verbally notified me
 26 that Plaintiffs intended to replace named Plaintiff Leslie Marie Shearn with another named plaintiff.
 27 On that basis, until very recently Plaintiffs have either failed or refused to respond to written
 28 discovery requests concerning Ms. Shearn. Moreover, Plaintiffs have failed, until very recently, to

1 offer any dates for Ms. Shearn's deposition, despite the fact that Defendants have been asking to
 2 depose Ms. Shearn for seven months. The reason I have said "either failed or refused to respond to
 3 written discovery" is because Plaintiffs' counsel never provided me with any reasons as to why they
 4 did not timely respond to the written discovery propounded. Further, each time I brought up the
 5 subject of this failure to respond, Plaintiffs' counsel would never address the issue.

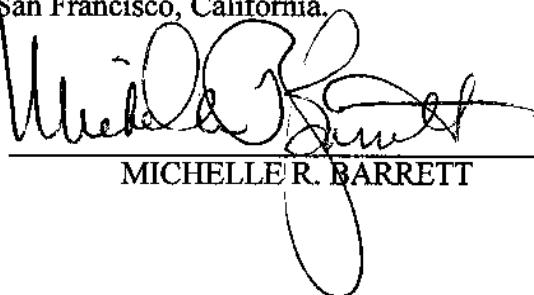
6 8. Although I have requested multiple times that named Plaintiff Wong, who
 7 lives in the Bay Area, be produced to allow Defendants to finish his deposition, Plaintiffs' counsel
 8 Mr. Schwartz has refused to re-produce Plaintiff Wong claiming that Plaintiff Wong need only to
 9 have "made himself available" for a seven hour period in one day and that if the deposition was not
 10 finished when Plaintiff Wong made himself available that Plaintiff Wong did not have to appear to
 11 complete his deposition. Defendants have not exceeded the seven hour time limit imposed by
 12 Federal Rule of Civil Procedure 30(d)(1).

13 9. Attached hereto as Exhibit F is a true and correct copy of the relevant and
 14 cited pages of the deposition transcript of Jeanette Jennings. Ms. Jennings' deposition was taken on
 15 December 19, 2007.

16 10. Attached hereto as Exhibit G is a true and correct copy of the relevant and
 17 cited pages of the deposition transcript of named Plaintiff Philip Wong. Mr. Wong's deposition was
 18 taken on November 29, 2007.

19 11. Attached hereto as Exhibit H is a true and correct copy of the relevant pages
 20 of the deposition transcript of proposed named plaintiff Karen Flanagan. Ms. Flanagan's deposition
 21 was taken on July 10, 2008.

22 I declare under penalty of perjury under the laws of the State of California and the
 23 United States of America that the foregoing declaration is true and correct to the best of my personal
 24 knowledge. Executed this 31st day of July, 2008, in San Francisco, California.



MICHELLE R. BARRETT

25
 Firmwide:86007617.1 023404.1043
 26
 27
 28

EXHIBIT A

Barrett, Michelle R.

From: Schwartz, Bryan [schwartz@nka.com]
Sent: Wednesday, January 09, 2008 1:52 PM
To: Barrett, Michelle R.
Cc: Honkanen, Melissa
Subject: amending complaint

Michelle,

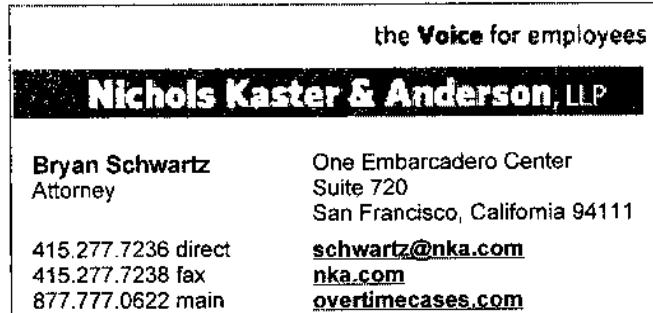
I am conferring with you, via this email, regarding our intention to amend the complaint in several respects. If you agree, then we will amend unopposed, and if you disagree, then we will file our motion soon. As I'm sure you know, the standard for a Court accepting a motion to amend at this stage of litigation is extremely permissive, but if you want to go through the exercise of briefing it, let me know.

For now, we plan to:

- 1) Add a couple/few additional named plaintiffs
- 2) Add minimum wage claims, which a number of our clients have alleged in their declarations (which you already have); and
- 3) Add Pennsylvania state claims.

Let me know what you think.

Bryan



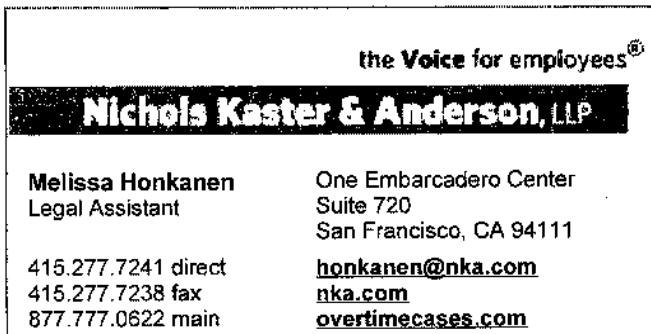
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EXHIBIT B

Barrett, Michelle R.

From: Honkanen, Melissa [mhonkanen@nka.com]
Sent: Friday, February 08, 2008 2:05 PM
To: Tichy, George J.; Barrett, Michelle R.
Cc: Lukas, Paul
Subject: Discovery
Attachments: LTR re Discovery Meeting.pdf; Attachment.pdf

Counsel: Please see the attached.



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the Voice for employees

Nichols Kaster & Anderson LEP

February 8, 2008

VIA EMAIL AND U.S.MAIL

Michelle Barrett
Littler Mendelson, P.C.
650 California Street
20th Floor
San Francisco, CA 94108-2693

*Re: Wong et al v. HSBC et al
Our File # 10609-01
Court File #07-2446*

Dear Michelle:

Thank you for meeting with me yesterday to discuss the outstanding discovery issues. It is my intention to accurately describe the status of each of these issues as a result of our conference. If I fail to do so in any respect, please let me know.

1. **Mr. Lampka's Deposition.** You gave me the name of the attorney (Preston Zarlock at Phillips Laytle) who has been retained to represent HSBC Finance and Mr. Lampka at the deposition. You also warned me, however, that Mr. Zarlock is in, or is about to go into, trial and may be difficult to reach. I suggest that HSBC Finance agree to have you or another Littler lawyer represent them at the deposition as you did last month in the depositions we took in Chicago. In the meantime, I will try and contact Mr. Preston Zarlock to schedule the deposition.

2. **Motion to Amend the Complaint.** I informed you that we intended to bring a motion to amend to: a) add HSBC Finance as a defendant; b) add Pennsylvania state law claims, c) add a Pennsylvania representative plaintiff; d) and add a representative Plaintiff for New York and New Jersey. You advised me that Defendant was not inclined to stipulate to any amendment to the Complaint, but said you would discuss it with your client. Please let me know as soon as possible whether Defendant is willing to stipulate to any or all of these amendments to the Complaint.

3. **Plaintiff Chaussy's Deposition.** I informed you that Mr. Chaussy is generally available on Thursdays and Fridays, and that we were available almost any Thursday or Friday in March or April with the exception of the last week of each month. You agreed to get back to me with some proposed dates.

4. **Plaintiff Shearn's Deposition.** As I informed you, Ms. Shearn has been difficult for us to communicate with these days. I will let you know as soon as possible when we are able to contact her and provide some proposed dates.

5. **Plaintiff Wong's Deposition.** I informed you that it was our position that Mr. Wong made himself available for a full day of deposition, and to the extent that the deposition concluded short of the seven (7) hour limit excluding breaks, it was Defendants' choice to end it. I believe this position is consistent with what we told Defendant when it decided to conclude the deposition. However, since neither of us were present at the deposition, we agree that you would talk to Mr. Tichey, and I would speak to Bryan, and we would reconvene before we declared an impasse on the issue.

6. **Discovery Responses.** Rather than march through each requests individually, we discuss Defendant's responses more broadly. Overall, I was generally satisfied that Defendants are continuing its efforts to locate documents and respond to our requests as you discussed with Bryan previously. However, we did discuss a few specific requests that need to be mentioned here.

a. **Payroll Documents.** You informed me that you are experiencing some difficulty obtaining this information from HSBC Finance, but you are working on finding the documents. We understand, of course, the difficulty of obtaining such information, but as I informed you, this information is critical not just for our damage analysis, but will likely impact liability issues as well. Please advise as to how soon Defendants expect to produce this information.

b. **Manager Lists.** You informed me that you are still investigating whether Defendants are able to produce the manager lists in excel format beyond a list of those who are currently in place in such positions. I informed you that based on past experience, I believed Defendants could provide that information from its PeopleSoft program. Please let me know what you find out and when we can expect to obtain this important information.

c. **FLSA Training Materials.** You informed me that you are having difficulty opening the on-line FLSA training materials and will produce them as soon as you are able to convert them into a transferable format.

7. **Plaintiffs' Second Set of Request for Production.** I informed you that we have prepared a second set of requests for production, and I will serve that set under separate cover. As we discussed, I went through these requests and eliminated those that could be considered covered by one of our previous requests. I have attached a spreadsheet to this letter identifying the specific things we are seeking that we consider included in the previous requests. If you disagree regarding any of them, I will formally serve them.

Thank you again for meeting with me, and I remain available to resolve these or any other issues with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul J. Lukas".

Paul J. Lukas

EXHIBIT C

Barrett, Michelle R.

From: Barrett, Michelle R.
Sent: Monday, February 11, 2008 5:21 PM
To: Lukas, Paul
Subject: Wong et al. v. HMCU, HBUS: Response to February 8 Letter
Attachments: Doc3.pdf

Paul,

Attached please find my letter, which clarifies and/or responds to issues discussed in our February 7 telephone conversation.

Michelle

Michelle R. Barrett
Littler Mendelson, P.C.
650 California Street, 20th Floor
San Francisco, California 94108
415.433.1940 general
415.677.4089 direct telephone
415.743.6618 direct facsimile
mbarrett@littler.com
Assistant: Rosie T. Yee, ext. 5016364



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OHIO

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RHODE ISLAND

SOUTH CAROLINA

TEXAS

VIRGINIA

WASHINGTON

February 11, 2008

Michelle R. Barrett
Direct Fax: 415.743.6618**VIA E-MAIL/PDF**

Paul J. Lukas, Esq.
 Nichols Kaster & Anderson, LLP
 4600 IDS Center
 80 South 8th Street
 Minneapolis, MN 55402

Re: Philip Wong, et al. v. HSBC Mortgage Corp., et al.
USDC Action No. C 07-2446 MMC

- *Response to February 8, 2008 Letter re Discovery Issues and Plaintiffs' Request to Amend First Amended Complaint*

Dear Paul:

Thank you for your letter dated February 8, 2008, which summarizes topics covered in our February 7 telephone call. By this letter, I will clarify information listed in your letter, which I do not believe is completely accurate.

Robert Lampka's Deposition

As discussed, Preston Zarlock of Phillips Lytle has been retained to represent Mr. Lampka in his deposition. I wish to clarify that Mr. Zarlock's firm is "Phillips Lytle," rather than "Phillips Laytle." Additionally, I am not certain as to whether I stated that Mr. Zarlock will represent HSBC Finance Corporation at this deposition or not. If I did make this statement, I misspoke, because I am only aware that Mr. Zarlock has been retained to represent Mr. Lampka. It is my understanding that Mr. Zarlock has sent you a letter regarding this matter and that you and he will work together in handling subpoena issues and in scheduling a deposition date. I ask that you and Mr. Preston keep me apprised of the date agreed upon so that I can inform my clients.

Motion to Amend the First Amended Complaint

When we spoke on February 7, I had only been notified of Plaintiffs' desire to amend the First Amended Complaint as to amendments "b" and "c," which are listed in your February 8 letter. Until we spoke on February 7, I had not been told about the desire to add HSBC Finance Corporation as a defendant in this case. As discussed, because I was aware of proposed amendments "b" and "c," I was able to discuss those with my clients. These are not amendments to which my clients will agree.

February 11, 2008
VIA E-MAIL/PDF
Page 2

Thus, you will need to file a motion to request such amendments. With regard to adding HSBC Finance Corporation as a defendant, you indicated that part of the reason for adding this entity to the action would be to avoid the "problems" Plaintiffs had encountered in taking depositions and getting documents. I asked that I be given the opportunity to discuss this matter with my clients before providing you with an answer as to their willingness to agree to this amendment. I have left word with my clients on this subject; however, my contact is away from the office through February 13. As such, we have not yet been able to thoroughly discuss this matter. Once I receive instruction from my client on this issue, I will contact you.

Plaintiff Chaussy's Deposition

Thank you for providing dates on which Mr. Chaussy will be available for deposition. I am working to determine a date within those parameters that will work for us. I will contact you soon.

Plaintiff Shearn's Deposition

While you indicated that you had not been able to get into contact with Ms. Shearn, we did not discuss you actually providing my office with dates for her deposition. Instead, you indicated that it was likely that Ms. Shearn would no longer remain a named Plaintiff in this case. While I certainly not hold you to this statement, I wish to be clear that my clients are not amenable to waiting months to take Ms. Shearn's deposition. We will wait to see if Ms. Shearn is available to provide responses to Defendants' document requests, as well as documents responsive to the requests. If she fails to do so in a timely manner, Defendants will take the necessary actions to request that Ms. Shearn be dismissed from the case and/or declared an improper representative.

Plaintiff Wong's Deposition

I have spoken with Mr. Tichy, who took Plaintiff's deposition on November 29, 2007. Although Plaintiff may have been present in our offices that day for a deposition, he was not "available" for the full seven hours. In fact, Plaintiff and Mr. Schwartz requested and took a number of breaks that day. It was not until 5:26 p.m. that the deposition adjourned for the day and Mr. Tichy expressly reserved the right to complete Plaintiff Wong's deposition. Given the fact that Mr. Tichy waited to adjourn the deposition after close of business and not early in the day, we believe it is appropriate and reasonable for Plaintiff Wong to appear and to complete his deposition. If you are unwilling to produce Plaintiff Wong again for his deposition, please let me know so that Defendants can bring the appropriate motion before the Court. If you are willing to produce Plaintiff Wong again, please provide me with proposed dates for the deposition.

February 11, 2008
VIA E-MAIL/PDF
Page 3

Discovery Responses

With regard to the specific documents referenced in your February 8 letter, I wish to clarify my statement related to payroll records. I did not specifically state that HSBC Finance Corporation possesses the payroll documents in question. Rather, I stated that I had had some difficulty determining which entity had such documents. Both you and I hypothesized that the entity might in fact be HSBC Finance Corporation; however, I did not affirmatively state that this was the entity possessing such records. I will continue to work on obtaining these records using the parameters upon which Mr. Schwartz and I previously agreed.

Plaintiffs' Second Set of Request for Production

By virtue of the fact that your requests and your letter references a "Second Set" of document requests, I presume that these new requests are directed at HSBC Mortgage Corporation (USA), as HSBC Bank USA, N.A. has never been served with any document requests. Please note, however, that this second set of requests does not show the identity of the party requested to respond, as is customary in discovery practice. HSBC Mortgage Corporation (USA) will thus be the only party responding to these requests unless another set of requests specifying a different party is served.

Finally, with regard to the spreadsheet of documents attached to your letter, please be advised that we have already produced some FLSA training materials or documents used by HSBC Mortgage Corporation (USA) prior to the implementation of the web-based training. If any other documents exist, we will certainly supplement our production.

Very truly yours,

/s/ Michelle R. Barrett

MICHELLE R. BARRETT

EXHIBIT D

Barrett, Michelle R.

From: Schwartz, Bryan [schwartz@nka.com]
Sent: Wednesday, March 05, 2008 11:10 AM
To: Barrett, Michelle R.
Cc: Honkanen, Melissa; Lukas, Paul
Subject: RE: amending complaint

Michelle,

I note that in my absence, Paul and you corresponded to some extent regarding our proposed motion to amend. One issue which appears to have been omitted from your discussion related to our minimum wage claims (see below). An additional issue which has arisen is our desire to add HSBC Finance Corporation as a Defendant.

Please give me the final status of Defendant's position on all of the amendments we are seeking.

Thanks,

Bryan

From: Schwartz, Bryan
Sent: Wednesday, January 09, 2008 1:52 PM
To: 'Barrett, Michelle R.'
Cc: Honkanen, Melissa
Subject: amending complaint

Michelle,

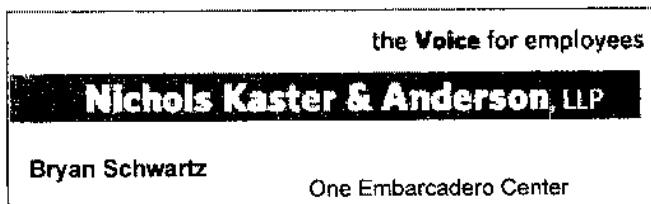
I am conferring with you, via this email, regarding our intention to amend the complaint in several respects. If you agree, then we will amend unopposed, and if you disagree, then we will file our motion soon. As I'm sure you know, the standard for a Court accepting a motion to amend at this stage of litigation is extremely permissive, but if you want to go through the exercise of briefing it, let me know.

For now, we plan to:

- 1) Add a couple/few additional named plaintiffs
- 2) Add minimum wage claims, which a number of our clients have alleged in their declarations (which you already have); and
- 3) Add Pennsylvania state claims.

Let me know what you think.

Bryan



Attorney	Suite 720 San Francisco, California 94111
415.277.7236 direct	schwartz@nka.com
415.277.7238 fax	nka.com
877.777.0622 main	overtimecases.com

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EXHIBIT E

Barrett, Michelle R.

From: Barrett, Michelle R.
Sent: Tuesday, March 11, 2008 7:57 PM
To: Lukas, Paul; Schwartz, Bryan
Cc: Honkanen, Melissa
Subject: Letter re Discovery, Amending Complaint, etc.
Attachments: Document.tif

Paul and Bryan,

First, Bryan, welcome back to the office. I hope you enjoyed your time away. This letter responds to Paul's letter, your email and Melissa's voicemail. I'm back to my ridiculous schedule of back to back calls, meetings, and other business travel etc., so I'm relying more on my team to assist with things, but I'll still be the main contact on as much as possible.

Michelle

Michelle R. Barrett
Littler Mendelson, P.C.
650 California Street, 20th Floor
San Francisco, California 94108
415.433.1940 general
415.677.4089 direct telephone
415.743.6618 direct facsimile
mbarrett@littler.com
Assistant: Rosie T. Yee, ext. 5016364

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RHODE ISLAND

SOUTH CAROLINA

TEXAS

VIRGINIA

WASHINGTON

March 11, 2008

Michelle R. Barrett
Direct Fax: 415.743.6618**VIA E-MAIL/PDF**

Paul J. Lukas, Esq.
 Nichols Kaster & Anderson, LLP
 4600 IDS Center
 80 South 8th Street
 Minneapolis, MN 55402

Bryan J. Schwartz, Esq.
 Nichols Master & Anderson, LLP
 One Embarcadero Center, Suite 720
 San Francisco, CA 94111

Re: ***Philip Wong, et al. v. HSBC Mortgage Corp., et al.***
USDC Action No. C 07-2446 MMC

- Plaintiffs' Inquiry regarding Amending First Amended Complaint
- Plaintiff Sheam's Deposition and Discovery Responses
- Motion to Compel Completion of Plaintiff Wong's Deposition
- Documents Responsive to Plaintiffs' Discovery Requests
- Responses to Plaintiffs' Second Request for Production to HMCU
- Opt-In Depositions

Dear Paul and Bryan:

This letter responds to Paul's March 3 letter and Bryan's subsequent March 5 e-mail, as well as Melissa Honkanen's voicemail message left today regarding discovery responses. Further, it discusses Defendants' wish to take further depositions of opt-in Plaintiffs.

Inquiry Regarding Amending First Amended Complaint

Bryan's March 5 e-mail clarified that Plaintiffs not only wish to add named plaintiffs to the case, add Pennsylvania law state claims, and HSBC Finance Corporation as a Defendant, but that you also wished to add minimum wages claims to the case. Defendants' position on all of these items is that the rules only allow one amendment to a Complaint as a matter of right. This amendment was made in June 2007. Thus, Defendants will not agree to any of the amendments which Plaintiffs propose. We anticipate that Plaintiffs will thus make a Motion to the Court to amend

March 11, 2008
VIA E-MAIL/PDF
Page 2

the Complaint. We request that you confer with us as to the date to ensure we do not encounter the same scheduling problems we encountered with the Conditional Certification Motion.

Plaintiff Shearn's Deposition and Discovery Responses

It has been over a month since we requested dates on which to take Ms. Shearn's deposition. We ask that you provide us with potential dates sometime in the next week so that we may coordinate taking her deposition, along with other depositions in the New York and New Jersey areas. If Ms. Shearn is located somewhere other than New York or New Jersey please advise us immediately so we can make the necessary arrangements to take her deposition elsewhere.

Please also note that Ms. Shearn's failure to respond to the discovery propounded, which was due on March 3, waives all objections to discovery, including objections regarding work product and privilege. We ask that you confirm whether you will be dismissing Ms. Shearn as a representative Plaintiff in this matter and when you will do so, so that we may determine whether we need to make any motions related to her status as a representative Plaintiff, her failure to respond to discovery, and/or taking her deposition.

Continuing and Completing Plaintiff Wong's Deposition

Paul's March 3 letter references agreeing to a "second deposition" of Plaintiff Wong. To be clear, we have not requested a second deposition of Mr. Wong. Rather, we have asked that he be produced so that we may conclude his deposition, as allowed under the Federal Rules of Civil Procedure. We ask that Plaintiffs reconsider their position on this issue once again, as the Rules are clear that a party is entitled to at least seven (7) hours of another party's deposition. As you are aware, Magistrate Spero prefers not to deal with discovery motions; as such, we believe this is an issue the parties can work together upon to resolve.

Documents Responsive to Plaintiffs' Discovery Requests

Thank you for the clear listing of documents you believe to be relevant and most important with regard to Plaintiffs' previous document requests. I am working with HMCU to determine what documents can quickly be obtained and produced. I believe I should have a more concrete answer by the end of the week.

Responses to Second Set of Discovery Requests to HMCU

Today, Melissa Honkanen left a voicemail asking whether Defendant HSBC Mortgage Corporation (USA) would be responding to the Second Set of Requests for Production of Documents propounded. Responses are due on March 13, 2008. I am told that responses to those requests will be provided to Plaintiffs on that date.

March 11, 2008
VIA E-MAIL/PDF
Page 3

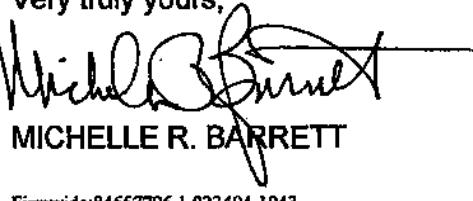
Opt-In Depositions

Please be advised that we will begin to take depositions for a number of opt-in Plaintiffs in this matter. Rather than unilaterally scheduling dates, we wish to work with you to find mutually agreeable dates in the near future. At present, we wish to schedule the depositions of:

- Larry Lee in Northern California
- Marilen Darcy in Southern California
- Alysse Gora in New York
- Peter Malone in New York
- Jason Shutes in New Jersey or Pennsylvania

Additionally, we still wish to take Ms. Sheam's deposition. Please provide us with these individuals locations, so that we may make travel plans. In particular, please let us know as soon as possible whether any of the following dates would work for the depositions of Mr. Lee and Ms. Darcy: March 25, 27, 28, 31 or April 2, 3, 4. Further, please provide dates for the others that may work later in April. If we are not able to schedule dates that are mutually agreeable in the near future, we will move forward to notice the depositions.

Very truly yours,


MICHELLE R. BARRETT

Firmwide:84557796.1 023404.1043

EXHIBIT F

Jeanette Jennings 30(b)(6) 12/19/2007
Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

RECEIVED

1

JAN 03 2008

IN THE UNITED STATES DISTRICT COURT LITTLER MENDELSON
NORTHERN DISTRICT OF CALIFORNIA

PHILIP WONG, FREDERIC)
CHAUSSY, and LESLIE MARIE)
SHEARN, individually, on)
behalf of all others) COPY
similarly situated, and)
on behalf of the general)
public,)
Plaintiffs,)
vs.) No. 3:07-cv-2446 MMC
HSBC MORTGAGE CORPORATION)
(USA); HSBC BANK USA,)
N.A.; and DOES 1 through)
50, inclusive,)
Defendants.)

30(b)(6) VIDEOTAPED DEPOSITION OF
JEANETTE JENNINGS

Taken December 19, 2007
Commencing at 9:08 a.m.

REPORTED BY: MELANIE L. HUMPHREY-SONNTAG, RDR, CRR, CSR
PARADIGM REPORTING & CAPTIONING INC.

1400 RAND TOWER
527 MARQUETTE AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55402-1331
612-339-0545 * 800-545-9668 * Fax 612-337-5575

Jeanette Jennings 30(b)(6) 12/19/2007
Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

113

1 Q. You don't --

2 A. But they always receive their -- their
3 biweekly draw.

4 Q. You don't have a -- a different minimum draw
5 for employees in New York or California or other
6 states; is that right?

7 A. No. The minimum is the minimum is the
8 minimum.

9 Q. And are you aware that loan officers are
10 required to reimburse the company for application
11 fees where a loan application fails?

12 A. That's a broad statement. They don't have
13 to pay it back if the loan is declined unless they
14 never collected the fee and we've incurred the
15 expenses, and that's actually in -- in the actual
16 incentive plan.

17 So, for example, if I've taken a loan
18 application but I did not collect the fee from the
19 customer and it's gone through the processing, at
20 the end of the processing that customer is then
21 declined but I still have not collected that fee
22 from the customer, I can -- I can get -- I can get
23 that deducted, yes.

24 If it's because it's a regular decline, no,
25 and I've done everything right, but that's under

Jeanette Jennings 30(b)(6) 12/19/2007
Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

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1 errors and omissions and, I think, exclusions, that,
2 if they fail to collect the necessary fees or if
3 it's through their own negligence, fraudulent --
4 whatever it might be -- then they could be -- have
5 those -- those fees deducted from commissions, yes.

6 Q. Do you know to what extent loan officers are
7 encouraged not to collect application fees by their
8 supervisors in order to close more deals?

9 A. They shouldn't be encouraged to do that at
10 all. I'm not familiar with that practice at all.
11 That would go against -- because we're incurring
12 expenses for the appraisals and what needs to be
13 done, so I would find that hard to believe that
14 they're encouraged to not collect the fees.

15 That doesn't make sense.

16 Q. Okay. Well, we have sworn testimony that
17 that's exactly what's happening, so --

18 A. Oh.

19 Q. -- and documentation of that happening, so
20 I'm wondering -- and so -- but it's your testimony
21 that you're not aware of that happening?

22 A. Absolutely not. No.

23 Q. And do you have something -- a published
24 policy -- that is specifically contrary to that
25 practice of supervisors encouraging or requiring

Jeanette Jennings 30(b)(6) 12/19/2007

Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

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1 their loan officers not to collect application fees?

2 A. That would be a business policy. It would
3 be a policy that's directed by HR, so I couldn't
4 comment to that. If they've published anything,
5 I -- I don't know.

6 But the plan itself speaks to it, that, if
7 they don't collect the fees, they will be charged.

8 Q. Where is that? The plan that --

9 A. Probably under --

10 Q. -- in Exhibit 3?

11 A. And, again, if it is not in this one, it is
12 in the newest versions.

13 Could be under "Exclusions." It could be
14 under the -- it's under the new plans most
15 definitely, but I need to -- I need to look at that.

16 I don't see it in this particular plan.

17 Q. But you believe that it's in a new plan?

18 A. Absolutely.

19 Q. So is it your testimony that -- that all
20 loan officers nationwide earn \$23,660 or more every
21 year that they're employed?

22 A. Whatever the Federal minimum is, and I think
23 that -- it changed this year if -- it was 23.
24 Previously it was just 23,000.

25 I would say that that would be at least that

Jeanette Jennings 30(b)(6) 12/19/2007
Philip Wong, et al. v. HSBC Mortgage Corporation, et al.\

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1 STATE OF ILLINOIS)

) SS.

2 COUNTY OF DU PAGE)

3

4 I, Melanie L. Humphrey-Sonntag,
5 Certified Shorthand Reporter No. 084-004299, CSR,
6 RDR, CRR, FAPR, and a Notary Public in and for the
7 County of DuPage, State of Illinois, do hereby
8 certify that previous to the commencement of the
9 examination, said witness was duly sworn by me to
10 testify the truth; that the said deposition was
11 taken at the time and place aforesaid; that the
12 testimony given by said witness was reduced to
13 writing by means of shorthand and thereafter
14 transcribed into typewritten form; and that the
15 foregoing is a true, correct, and complete
16 transcript of my shorthand notes so taken as
17 aforesaid.

18 I further certify that there were present at
19 the taking of the said deposition the persons and
20 parties as indicated on the appearance page made a
21 part of this deposition.

22 I further certify that I am not counsel for
23 nor in any way related to any of the parties to this
24 suit, nor am I in any way interested in the outcome
25 thereof.

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1 IN TESTIMONY WHEREOF I have hereunto set my
2 hand and affixed my Notarial Seal this 28th day of
3 December, A.D. 2007.

4

5

M.L.Humphrey-Sonntag
6 Certified Shorthand Reporter

7 Registered Diplomate Reporter

8 Certified Realtime Reporter

9 Fellow of the Academy of

10 Professional Reporters



10 My commission expires
11 February 17, 2010

12

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EXHIBIT G

1

2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4 SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy
and Leslie Marie Shearn,
individually, on behalf of all
others similarly situated, and on
behalf of the general public.

RECEIVED

JUL 23

LITTLER MENDELSON

Plaintiffs,

Index No.
C07 2446
MMC (ECF)

HSBC Mortgage Corporation
(USA); HSBC Bank (USA),
N.A.; and DOES 1
through 50, inclusive,

Defendants.

VIDEOTAPE DEPOSITION of KAREN FLANAGAN, taken by Defendants, held at the offices of Littler Mendelson, 532 Broad Hollow Road, Suite 142, Melville, New York on Thursday, July 10, 2008, commencing at 9:28 a.m., before Jean Wilm, a Registered Professional Reporter, Certified LiveNote Reporter and Notary Public within and for the State of New York.

1 Flanagan

2 A No.

3 Q -- of compensation that was
4 provided?

5 A No. They said they were working
6 it out.

7 Q Did you ever receive any
8 compensation for deposits received by the bank?

9 A I received a \$1,000 bonus, which
10 was not anywhere what I was told it would be.

11 Q From whom did you receive a \$1,000
12 bonus?

13 A Kevin MacPherson, the branch
14 manager for the bank.

15 Q When did you receive this?

16 A I don't recall which paycheck. I
17 don't recall which paycheck. I know I got it,
18 but I don't recall which paycheck.

19 Q Do you recall in what year?

20 A '07.

21 Q Was this the end of your
22 employment?

23 A Towards the -- towards the end.

24 Q In 2006, while you were working
25 for HSBC Mortgage Corporation, were you paid

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1 Flanagan

2 more than \$100,000?

3 A Yes.

4 Q During that year, you held two
5 positions: One was the position as the senior
6 mortgage loan consultant and also as a Premier
7 mortgage consultant; is that right?

8 A Yes.

9 MS. HAUGEN: Objection.

10 THE WITNESS: Sorry.

11 Q In 2006 did you receive a W-2 from
12 HSBC Mortgage Corporation for the amount in
13 excess of \$100,000?

14 A I don't remember, nor can I find
15 my 2006 W-2s. I don't recall what the breakdown
16 of what the income was and how much came from
17 the mortgage company and how much came from the
18 bank. I looked for them last night. I can't
19 find them.

20 Q Isn't it a fact that in 2006, you
21 received a W-2 from the mortgage company?

22 A I know at least from the mortgage
23 company.

24 Q Right.

25 A I don't know if that's the only

1 Flanagan

2 one. I don't remember and I can't find them.

3 Q Okay. And did you receive a W-2
4 from the mortgage company in 2005?

5 A Yes.

6 Q Did you bring that today?

7 A No.

8 Q Do you have it?

9 A I have it somewhere at home.

10 Q Do you recall if you were paid in
11 excess of \$100,000 in 2005?

12 A Yes.

13 Q And you were paid in excess of
14 \$100,000 in 2005 by HSBC Mortgage Corporation;
15 is that right?

16 A Yes.

17 MS. HAUGEN: I just want to
18 state for the record that when she
19 is able to find those, that we will
20 produce them in the course of
21 discovery.

22 MR. TICHY: I appreciate
23 that.

24 BY MR. TICHY:

25 Q And just so the record's clear, I

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1 Flanagan

2 started to look at that one. You
3 said to wait.

4 Q Okay. Let me show you Defendants'
5 Exhibit 10. Would you take a look at that?

6 A Uh-hum.

7 Q Okay. This purports to be a job
8 description for the Premier mortgage sales
9 officer position of the mortgage company.

10 Do you see that?

11 A Uh-hum.

12 Q And I just read for you the
13 summary of the position, and you told me that
14 that was accurate, though, you may have
15 disagreed as to what was the most important.

16 Was it accurate that during your
17 time as a Premier mortgage sales officer that
18 you were responsible for developing and
19 maintaining long-term referral sources with
20 realtors, branches, builders, attorneys and
21 other external sources?

22 A No. It wasn't. That's not the
23 way that they presented the position at all.

24 Q Okay. Was it your job to counsel
25 affluent customers on various types of mortgage

1 Flanagan

2 financing?

3 A Yes.

4 Q And you were to work with them to
5 help them choose a program that best suited
6 their needs?

7 A Yes.

8 Q Is that right?

9 A Uh-hum.

10 Q And, in fact, that was the case
11 during the entire time that you worked with HSBC
12 Mortgage --

13 A Always. Well, that's my job.
14 That's any originator's job.

15 Q Right, and you were, as a Premier
16 mortgage sales officer, responsible for
17 developing, expanding, and retaining customer
18 relationships; is that right?

19 A Yes.

20 Q Was one of your functions to
21 educate realtors, attorneys, builders, branches
22 and the public on mortgage programs through
23 seminars?

24 A No, that was never, that was never
25 brought up to me, no, as part of my job

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1 Flanagan

2 description.

3 Q But did you do that?

4 A Not as part of that job

5 description. I do that because that's what I

6 do. But no, it was not told to me, no.

7 Q But that was part of what you did

8 when you were the --

9 A Part of what I did.

10 Q -- the Premier mortgage sales

11 officer; is that right?

12 A Yep.

13 Q You know, when you had these

14 seminars did you arrange for a location to

15 conduct these seminars?

16 A Yes.

17 Q And would you normally get a hotel

18 room, or would you --

19 A No.

20 Q Would you go to some other site?

21 A No, it was usually in the branch.

22 Q So you would normally conduct
23 these at the branch; is that right?

24 A If I had a seminar, it was at the
25 branch or at the library. I did one at the

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1 Flanagan

2 home office?

3 A No. Most of my time outside --
4 no, because the home office I was there on the
5 weekends. I did a lot of work on the weekends,
6 Saturday, Sunday, and in the branch. I visited
7 the -- I would say out of all of the time, my
8 home office was where I spent the majority of my
9 time.

10 Q And a lot of what you did in your
11 home office was to support the sales which you
12 were generating with customers; is that right?

13 A Oh, absolutely. I would take
14 applications over the phone, send out the
15 packages from the home office. That type of
16 thing.

17 Q Okay. And these were steps which
18 you took prior to the meeting with the customers
19 you said, right?

20 A Yes.

21 Q And these were steps which you
22 took prior to attending closings --

23 A Uh-hum.

24 Q -- which were usually at an escrow
25 company; is that right?

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1 Flanagan

2 A The attorney's office.3 Q Or the attorneys' office?4 A Yes.5 Q Okay. So all of the work6 basically that you were doing at home was in
7 preparation for developing a loan opportunity
8 and hopefully a sale; is that right?9 MS. HAUGEN: Objection. You
10 are mischaracterizing her testimony.11 A No. I would say no. It was a
12 combination of once the loan was in, you know,
13 following it up, completing the documentation,
14 staying in touch with the processor, you know,
15 the person in Buffalo who's handling the loan.16 We were -- there was a lot of
17 imaging, sending the documents to an imaging
18 system, that type of thing that had nothing to
19 do with developing new business. It had to do
20 with taking care of the business that you had in
21 the pipeline.22 Q Okay. So the work that you were
23 doing at your home office --24 A Was more paperwork.25 Q -- was a lot of paperwork?

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1 Flanagan

2 A Uh-hum.

3 Q And it was, to some extent, phone
4 calls; is that right?

5 A Uh-hum. Uh-hum.

6 Q Which was all to support the sales
7 which you were generating; is that right?

8 A Sure.

9 Q Okay. And those were sales which
10 were the basis of the five referral sources that
11 you had been working with, the banks, the
12 attorneys, the realtors?

13 A Uh-hum.

14 Q And -- and the accountants as well
15 as your preexisting customers; is that right?

16 A And the branch. The branch
17 people.

18 Q Okay. Fair enough.

19 When you became a Premier mortgage
20 loan officer, to whom did you report?

21 A I had many bosses. I interacted
22 and reported to Kevin MacPherson. I also
23 reported to Eric Liboy and I reported to Mike
24 Vasami. Kevin was the branch manager.

25 Q Who was Eric Liboy?

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1 Flanagan

2 Defendants' Exhibit 15 for
3 identification, as of this date.)

4 BY MR. TICHY:

5 Q Okay. I have given you a document
6 which is marked Exhibit Number 15.

7 Have you ever seen that before?

8 A Yes.

9 Q Okay. And is this a document that
10 described the incentive program or commission
11 arrangement under which you worked in 2006?

12 A In 2006, yes. There was another
13 one after this.

14 Q Okay. And we will get to that in
15 a minute.

16 So in terms of how you were
17 compensated, this document described how the
18 system worked, what was added, what was not
19 included, what was deducted so that ultimately
20 you came to an amount that you were to be paid,
21 correct?

22 A Correct.

23 MS. HAUGEN: Objection.

24 It's compound.

25 Q In a nutshell, it described how

1

Flanagan

2

you were to be paid correct?

3

A It's the commission plan. Yes.

4

Q If you will look at page 3, do you
see that?

6

A Yes.

7

Q Okay. There's a reference to
withdrawn, declined loans due to
error/omissions, okay.

10

Now, without regard to what is an
error or an omission, because that is something
that really is a matter between you and the
mortgage company, this particular provision
is -- deals with the amount of incentive being
reduced by an amount equal to a loss or expense;
is that right?

17

A Uh-hum.

18

Q Is that what you were talking
about?

20

A No.

21

Q Okay. Fair enough.

22

But as you understand this
particular provision, essentially you got less
commission if there were a problem due to an
error or omission as described in that

1 Flanagan

2 particular section; is that right?

3 MS. HAUGEN: Take as much

4 time as you need to review that.

5 A No, I don't think that's what this
6 means. I don't think that's what this means at
7 all.

8 Q What do you think that means?

9 A Well, what this is saying is that
10 if HSBC incurs a loss or an expense as a result
11 of a participant, which would be a loan
12 officer's error or omission, which is a
13 reportable event -- in other words, if I submit
14 an application where I know that there's
15 something going on with that application that I
16 don't include, which is including, but not
17 limited to, falsification of records,
18 negligence, that the following action may be
19 taken in addition to any other action which
20 would be, I guess, disciplinary action, and it
21 says a participant's commission incentive shall
22 be reduced by an amount equal to the loss or
23 expense incurred by HSBC as a result of the
24 reportable event.

25 I don't have any -- I've never had

1 Flanagan

2 anything like that happen on my loan nor has
3 anybody that I know that works with HSBC have
4 anything like that happen to them on a loan.

5 Q Okay. Fair enough.

6 Was there ever a time when you
7 were given a paycheck by HSBC Mortgage Company
8 that you thought was incorrectly calculated?

9 A You know, I honestly don't
10 remember, and it's the type of thing where if it
11 did happen, I just would have brought it to my
12 manager, we would have gotten it corrected, and
13 I just wouldn't have -- it would be gone. I
14 just, I really don't -- I can't really -- it
15 just would have been resolved.

16 Q I would have expected nothing
17 less, frankly, but I needed you to say that.

18 A Yeah.

19 Q Okay. So far as you know, your
20 compensation for 2006 was in conformance with
21 Exhibit Number 15?

22 A Yes, it doesn't mention the
23 sign-on bonus. That's the only thing that's not
24 in here because it was something I think that
25 was negotiated, you know, with me.

1
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3
C E R T I F I C A T E

4 STATE OF _____:

5 COUNTY/CITY OF _____:

6
7 Before me, this day, personally appeared
8 KAREN FLANAGAN, who, being duly sworn, states
9 that the foregoing transcript of her
10 Deposition, taken in the matter, on the date, and
11 at the time and place set out on the title page
12 hereof, constitutes a true and accurate transcript
13 of said deposition.

14
15 _____
16 KAREN FLANAGAN

17
18 SUBSCRIBED and SWORN to before me this _____
19
20 day of _____, 2008, in the
21 jurisdiction aforesaid.

22 _____
23 _____
24 My Commission Expires Notary Public
25

EXHIBIT H

CERTIFIED COPY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHILIP WONG, FREDERIC CHAUSSY,
And LESLIE MARIE SHEARN,
Individually, on behalf of all
Others similarly situated, and
On behalf of the general public,
Plaintiffs,

vs.

HSBC MORTGAGE CORPORATION (USA)
HSBC BANK, USA, N.A.; and
DOES 1 through 50, inclusive,
Defendants.

NO. 3:07-CV-2446 MMC

DEPOSITION OF PHILIP WONG

SAN FRANCISCO, CALIFORNIA

NOVEMBER 29, 2007

Reported by Yvonne Fennelly, CSR No. 5495

Z
S O N U A P

1 A. Yes.

2 Q. Were you still participating after that in a
3 commission arrangement?

4 A. As in receiving commissions?

5 Q. Yes.

6 A. Yes, I believe so.

7 Q. Did the percentage of commission that you
8 received during the first year of your employment remain
9 constant throughout the entire period?

10 A. No.

11 Q. What were the commission percentages which you
12 were provided during your first year of employment?

13 A. Can you be more specific?

14 Q. Well, why don't you describe the commission
15 arrangement which you had with the mortgage company when
16 you were working for the mortgage company during your
17 first year of employment.

18 A. Depending on the size of the loan.

19 Q. Can you describe what that arrangement was?

20 A. However, it's different due to the fact that we
21 do have our application fee being withdrawn from our own
22 personal payroll.

23 Q. Will you explain that to us?

24 A. If there was a loan that was declined, and the
25 application fee gets withdrawn from our commission.

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1 Q. So if an individual who is seeking a loan
2 submits an application fee, that application fee would
3 be considered part of the income for which a commission
4 would be paid if the loan goes through; is that right?

5 A. Can you rephrase the question, please.

6 Q. Well, why don't you explain it to me.

7 A. If there was a client seeking a loan and the
8 loan file was declined due to our underwriting
9 guidelines, then that application fee is withdrawn from
10 our paycheck.

11 Q. Does the application fee get added to your
12 paycheck in some way if the loan goes through?

13 A. No.

14 Q. Let me see if I understand this: How much is
15 an application fee?

16 A. \$325.

17 Q. Okay.

18 So if an application is submitted, the
19 individual pays \$325; and if the loan is not approved,
20 your compensation is reduced by \$325; is that what
21 you're saying?

22 A. No.

23 Q. Well, then will you clarify that for me,
24 please.

25 A. If an applicant submits an application, it goes

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1 REPORTER'S CERTIFICATION
2

3 You, Yvonne Fennelly, Certified Shorthand
4 Reporter, in and for the State of California, do hereby
5 certify:

6
7 That the foregoing witness was by me duly
8 sworn; that the deposition was then taken before me at
9 the time and place herein set forth; that the testimony
10 and proceedings were reported stenographically by me and
11 later transcribed into typewriting under my direction;
12 that the foregoing is a true record of the testimony and
13 proceedings taken at that time.

14
15 IN WITNESS WHEREOF, you have subscribed my name
16 this 14th day of December, 2007.

17
18
19
20
21 /s/ Yvonne Fennelly

22 Yvonne Fennelly, CRP, CSR No. 5495
23
24
25